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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

11 LARRY JAMES PORTER,
12 Plaintiff,
13 v.
14 YANG, *et al.*,
15 Defendant

Case No. 1:25-cv-00311-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO RANDOMLY ASSIGN DISTRICT JUDGE TO ACTION

FINDINGS AND RECOMMENDATIONS REGARDING DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE AND FAILURE TO OBEY COURT ORDER

(ECF No. 10)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Larry James Porter (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On November 3, 2025, the Court screened Plaintiff's complaint and found that it stated cognizable claims against Defendant Jane Doe Sergeant for deliberate indifference to medical need and conditions of confinement in violation of the Eighth Amendment and a claim against California Department of Corrections and Rehabilitation for violation of the Americans with Disabilities Act, but failed to state any other cognizable claims for relief against any other defendant. (ECF No. 10.) Plaintiff was directed to file a first amended complaint curing the

1 deficiencies identified in the Court’s screening order or to notify the Court of his willingness to
2 proceed only on his claims against Defendants Jane Doe Sergeant and CDCR, within thirty days.
3 (Id.) Plaintiff has not responded to the November 3, 2025 screening order or otherwise
4 communicated with the Court, and the deadline to do so has now expired.

5 **II. Failure to Prosecute and Failure to Obey a Court Order**

6 **A. Legal Standard**

7 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
8 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
9 within the inherent power of the Court.” District courts have the inherent power to control their
10 dockets and “[i]n the exercise of that power they may impose sanctions including, where
11 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
12 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
13 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
14 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
15 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
16 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
17 (dismissal for failure to comply with court order).

18 In determining whether to dismiss an action, the Court must consider several factors:
19 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
20 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
21 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
22 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

23 **B. Discussion**

24 Here, Plaintiff’s response to the Court’s November 3, 2025 screening order is overdue and
25 he has failed to comply with the Court’s order. The Court cannot effectively manage its docket if
26 Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second factors
27 weigh in favor of dismissal.

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1 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
2 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
3 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against
4 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d
5 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
6 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
7 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Products*
8 *Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

9 Finally, the Court’s warning to a party that failure to obey the court’s order will result in
10 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
11 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. Plaintiff was warned in the Court’s
12 October 28, 2025 screening order that failure to comply with that order would result in dismissal
13 of this action, without prejudice, for failure to obey a court order and for failure to prosecute.
14 (ECF No. 7, p. 12.) Thus, Plaintiff had adequate warning that dismissal could result from his
15 noncompliance.

16 Additionally, at this stage in the proceedings there is little available to the Court that
17 would constitute a satisfactory lesser sanction while protecting the Court from further
18 unnecessary expenditure of its scarce resources. Although Plaintiff is not proceeding *in forma*
19 *pauperis* in this action, it appears that monetary sanctions will be of little use and the preclusion
20 of evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating his
21 case.

22 **III. Recommendation**

23 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
24 District Judge to this action.

25 Furthermore, the Court finds that dismissal is the appropriate sanction and HEREBY
26 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court
27 order and for Plaintiff’s failure to prosecute this action.

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1 These Findings and Recommendations will be submitted to the United States District
2 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
3 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may
4 file written objections with the court. The document should be captioned “Objections to
5 Magistrate Judge’s Findings and Recommendations.” **Objections, if any, shall not exceed**
6 **fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page**
7 **number if already in the record before the Court. Any pages filed in excess of the 15-page**
8 **limit may not be considered.** The parties are advised that failure to file objections within the
9 specified time may result in the waiver of the “right to challenge the magistrate’s factual
10 findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter*
11 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

12
13 IT IS SO ORDERED.

14 Dated: December 12, 2025

15 /s/ Barbara A. McAuliffe
16 UNITED STATES MAGISTRATE JUDGE

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